

that a package does not contain a hazardous material, the agent shall securely close the package, mark and certify the reclosed package to indicate that it was opened and reclosed, and return the package to transportation.

(d) *Non-compliant package.* If, after an agent exercises an authority under § 109.5, the agent finds that a package contains hazardous material and does not conform to requirements in subchapter C of this chapter, but does not present an imminent hazard, the agent will return the package to the person in possession of the package at the time the non-compliance is discovered for appropriate corrective action. A non-compliant package may not continue in transportation until all identified non-compliance issues are resolved.

#### § 109.15 Termination.

When the facts disclosed by an investigation indicate that further action is not warranted under this part at the time, the Administrator will close the investigation without prejudice to further investigation and notify the person being investigated of the decision. Nothing herein precludes civil enforcement action at a later time related to the findings of the investigation.

#### § 109.16 Notification of enforcement measures.

In addition to complying with the notification requirements in § 109.7 of this part, an agent, after exercising an authority under this subpart, will immediately take reasonable measures to notify the offeror and the person in possession of the package, providing the reason for the action being taken, the results of any preliminary investigation including apparent violations of subchapter C of this chapter, and any further action that may be warranted.

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### Subpart C—Emergency Orders

#### § 109.17 Emergency Orders.

(a) *Determination of imminent hazard.* When an Administrator determines that a violation of a provision of the

Federal hazardous material transportation law, or a regulation or order prescribed under that law, or an unsafe condition or practice, constitutes or is causing an imminent hazard, as defined in § 109.1, the Administrator may issue or impose emergency restrictions, prohibitions, recalls, or out-of-service orders, without advance notice or an opportunity for a hearing. The basis for any action taken under this section shall be set forth in writing which must—

(1) Describe the violation, condition, or practice that constitutes or is causing the imminent hazard;

(2) Set forth the terms and conditions of the emergency order;

(3) Be limited to the extent necessary to abate the imminent hazard; and,

(4) Advise the recipient that, within 20 calendar days of the date the order is issued, recipient may request review; and that any request for a formal hearing in accordance with 5 U.S.C. 554 must set forth the material facts in dispute giving rise to the request for a hearing; and

(5) Set forth the filing and service requirements contained in § 109.19(f), including the address of DOT Docket Operations and of all persons to be served with the petition for review.

(b) *Out-of-service order.* An out-of-service order is issued to prohibit the movement of an aircraft, vessel, motor vehicle, train, railcar, locomotive, transport unit, transport vehicle, or other vehicle, or a freight container, portable tank, or other package until specified conditions of the out-of-service order have been met.

(1) Upon receipt of an out-of-service order, the person in possession of, or responsible for, the package must remove the package from transportation until it is brought into compliance with the out-of-service order.

(2) A package subject to an out-of-service order may be moved from the place where it was found to present an imminent hazard to the nearest location where the package can be brought into compliance, provided that the agent who issued the out-of-service order is notified before the move.

(3) The recipient of the out-of-service order must notify the operating administration that issued the order when